

**SUFFOLK, ss.**

# Building Code Appeals Board

## Docket# 10-869

Donald Quinn and Trustees of New Welch Realty Trust,  
Appellants

V.

Town of Dennis,  
Appellee

## BOARD'S RULING ON APPEAL

## Procedural History

This matter came before the State Building Code Appeals Board (“Board”) on the Appellant’s appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board grant a variance from 7th edition 780 CMR 5111.8 for the property at 9 Mark Way, Dennis, MA. In accordance with G.L. c. 30A, §§ 10 and 11; G.L. c. 143, §100; 801 CMR 1.02 *et. seq.*; and 780 CMR 122.3.4, the Board convened a public hearing on April 20, 2010 where all interested parties were provided with an opportunity to testify and present evidence to the Board. Brian Florence, the building official, and Danielle Justo, the Appellant’s representative, appeared for the hearing as noted on the sign in sheet which is on file at the Department of Public Safety.

## Exhibits

- ## 1. State Building Code Appeals Board Appeal Application Form

### **Findings of Fact**

1. The Appellant's property is located at 9 Mark Way, Dennis, MA ("Property"). The Property is a vacant lot.
2. On April 29, 2008, the Appellant received a Building Permit for the Property.
3. On June 11, 2009, the landowner of abutting property Robert Ewing requested that the Building Commissioner revoke the Building permit and filed an appeal with the Dennis Zoning Board of Appeals ("ZBA"). On September 21, 2009, the ZBA unanimously held for the Appellant and upheld the Building Permit. The abutting landowner appealed the decision to Land Court.
4. Due to the ongoing litigation, the Appellant has not been able to commence construction due to the impracticability of investing in construction that could potentially be forced to be undone in the face of an unfavorable decision from the land court.
5. As of the date of the hearing, the Appellant has only constructed a driveway on the Property.
6. The Building Permit that the Appellant has obtained for the Property is due to expire on April 29, 2010. This permit has been extended four times over the past two years.
7. Land Court Chief Justice Scheier has indicated to the Appellant that she would be hard-pressed to render a final decision prior to the expiration of the Building Permit on April 29, 2010. In addition, a second objector has filed a Motion to Intervene, causing potential further complications.
8. On March 16, 2010, the Appellant made a written request for a further extension of the Building Permit which was denied on March 23, 2010.

9. The building official for the Town of Dennis is not opposed to an extension of the building permit, but is unsure whether or not it is within the Town's authority to continue authorizing extensions and believes that the State Building Code Appeals Board should address the matter and grant the extension instead.

### **Discussion**

The issue in this case is whether the Appellant should be granted a variance to 780 CMR 5111.8 which provides in pertinent part that “[a]ny permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six months after its issuance; however for cause, and upon written request of the owner, one or more extensions of time, for periods not exceeding six months each, may be granted in writing by the building commissioner or inspector of building. Work ... must proceed in good faith continuously to completion so far as it is reasonably practicable under the circumstances.”

The Appellant received a Building Permit from the Town of Dennis for its Property on April 29, 2008. In June 2009, the abutting landowner requested that the Building Commissioner revoke the Building Permit. On September 21, 2009, the Zoning Board of Appeals held in favor of the Appellant and the Building Permit. The abutting landowner appealed to the Land Court and the Property has remained the subject of litigation. The Appellant has received four extensions to his Building Permit in the past two years, but has deemed it impracticable to “proceed in good faith continuously to completion” as required by 780 CMR 5111.8 because the final outcome of the litigation regarding the Property could potentially force any work to be removed. The Chief Justice of the Land Court where the litigation is pending has indicated to the Appellant that the Court would be hard-pressed to deliver a final disposition before the

Building Permit's current deadline expired. As such, while the Town of Dennis is not opposed in principle to granting the Appellant another extension, the Town's building official is hesitant as to his authority regarding further extensions.

Based on the fact that the pending litigation in land court presents a hardship to the Appellant, a motion was made to grant a variance to 780 CMR 5111.8 on the condition that the Building Permit will expire 90 days after the Land Court Justice has made her determination on the pending litigation with the abutting landowner Robert Ewing unless construction on the Property has commenced within that 90 day period. There was a second on the motion and a Board vote was taken which was unanimous.

### **Conclusion**

The Appellant's request for a variance from 780 CMR 5111.8, as described in the Discussion is hereby **ALLOWED**.

SO ORDERED.



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Jacob Nunnemacher

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Douglas Semple

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Alexander MacLeod

DATED: August 18, 2010

*In accordance with M.G.L. c. 30, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days of receipt of notice of this decision.*